



**CITY OF SUNNYVALE
REPORT
Planning Commission**

July 24, 2006

SUBJECT: **2006-0593 – Bradley Planning Group** [Applicant] **Delaine Topoll** [Owner]: Application located at **1244 Poplar Avenue** (near El Camino Real) in an R-2 (Low Medium Density Residential) Zoning District.

Motion **Use Permit** to allow construction of three new homes greater than 45% Floor Area Ratio and to allow interior lot widths for each lot of 60 feet instead of the required 76 feet.

Motion **Parcel Map** to subdivide one lot into three lots.

REPORT IN BRIEF

Existing Site Conditions Single-family home, converted garage and trailer home

Surrounding Land Uses

North One-story single-family homes

South Single-family and two-family homes

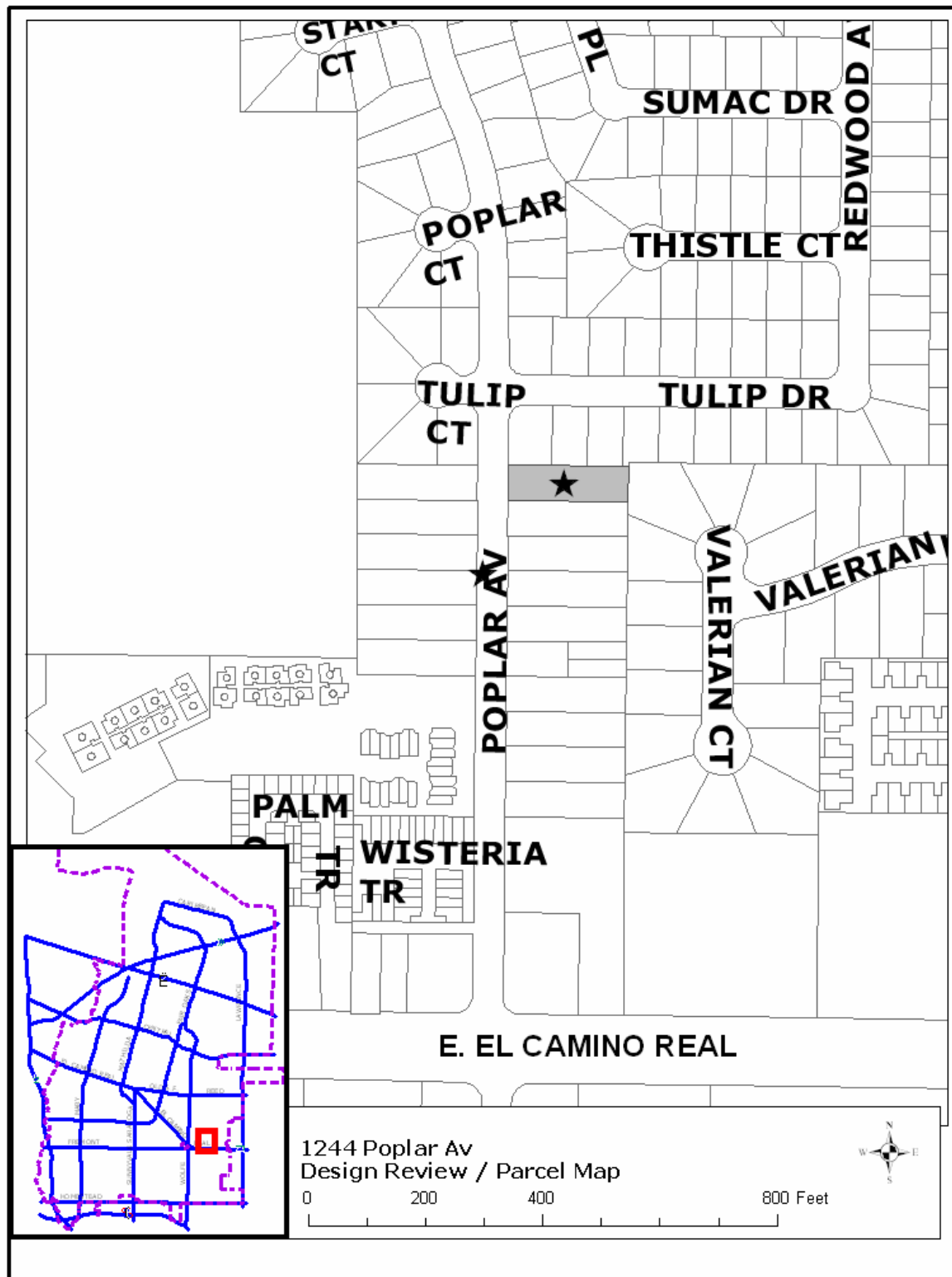
East Two-family homes

West Single-family and two-family homes

Issues Site Design and Neighborhood Compatibility

Environmental Status A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

Staff Recommendation Approve with Conditions



PROJECT DATA TABLE

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
General Plan	Residential Medium Density	Same	Residential Medium Density
Zoning District	R-2	Same	R-2
Lot Size (s.f.)	12,189	Lot 1= 4,967 Lot 2= 3,389 Lot 3= 3,707	8,000 min. for entire lot
Gross Floor Area (s.f.)	1,497	6,628	Per UP
Lot Coverage (%)	12.3	34	40 max.
Floor Area Ratio (FAR)	12.3%	Lot 1= 46.5% Lot 2= 62.9% Lot 3= 58.8% Overall= 54.7%	45% max. without PC review
No. of Units	1 legal unit 1 unpermitted unit	3	3 max.
Density (units/acre)	3.6	10.8	12 max.
Meets 75% min?	No	Yes	---
Bedrooms/Unit	1	Unit 1= 4 Unit 2= 4 Unit 3= 4	---
Lot width	60'	60'	76' without Use Permit
Unit Sizes (s.f.)	697	Unit 1= 2,312 Unit 2= 2,133 Unit 3= 2,183	N/A
No. of Buildings On-Site	3	3	---
Distance Between Buildings	73'	20'	20' min.
Building Height (ft.)	15	27	30 max.
No. of Stories	1	2	2 max.
Setbacks (First/Second Facing Property)			
Front	50'	Unit 1= 20'/25' Unit 2= N/A Unit 3= N/A	20'/25' min.

	EXISTING	PROPOSED	REQUIRED/ PERMITTED
Left Side	5'	Unit 1= 18'/18' Unit 2= 18'/18' Unit 3= 8'/11'	7'/11' min.
Right Side	9'	Unit 1= 4'8"/7'8" Unit 2= 12'/10' Unit 3= 4'/7'	4'/7' min.
Rear	5'	Unit 1= 17'/20' Unit 2= 17'/20' Unit 3= 10'/20'	10'/20' min.
Landscaping (sq. ft.)			
Total Landscaping	Unknown	4,593	3,295 min.
Landscaping/Unit	Unknown	Lot 1= 1,911 Lot 2= 930 Lot 3= 1,752	850 min.
Usable Open Space/Unit	Unknown	Lot 1= 514 Lot 2= 645 Lot 3= 590	500 min.
Frontage Width (ft.)	Unknown	Lot 1= 14' Lot 2= 12'/14' Lot 3= 16.5'	15 ft. min.
Parking			
Total Spaces	Unknown	12 (2 covered and 2 uncovered for each lot)	12 min.
Covered Spaces	0	6	6 min.
Driveway Width (ft.)	Unknown	12	12 min.
Stormwater			
Impervious Surface Area (s.f.)	Unknown	7,837	10,000
Impervious Surface (%)	Unknown	64.2	N/A

ANALYSIS

Description of Proposed Project

The project proposes to demolish an existing single-family home (and unpermitted converted garage and trailer) for the purpose of developing three new four-bedroom single-family homes. The project includes one unit fronting on Poplar Avenue, a second unit in the middle of the site and a third unit at the rear of the property. All units are accessed by a common driveway running along the north side of the property.

Background

Previous Actions on the Site: The existing home was built in 1948 and is not considered a heritage resource. There are no other applications made for the property.

Environmental Review

A Class 3 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 3 Categorical Exemption includes new construction of up to three new single-family homes in an urban setting.

Use Permit

Detailed Description of Use: The recent changes to the zoning code as a result of the Study Issue for Zoning Tools for Homeownership were made to assist in the development of new for-sale housing units. Among the changes is a provision to allow a Use Permit for projects (such as this one) that do not meet the minimum interior lot width requirements. In the past, this one aspect would have required the approval of a rezone to a PD Combining District and the approval of a deviation to the lot width requirements.

In addition to this change, the new code allows the entire lot prior to subdivision to be used in figuring minimum lot size. In the proposed project, this means that the entire existing lot must meet the minimum lot size rather than each proposed parcel. The standard minimum lot size is for an 8,000 square foot lot, which is met by the existing 12,189 square foot lot. The critical criterion becomes the requirement for at least 3,600 square feet of lot per unit (on average). In this case, a 12,189 square foot lot can have up to 3 units, which this project meets.

The other change as part of the code revisions is the removal of the requirement of a multi-family zoned property to have decreased height when located adjacent to an existing single-story single-family home. The code now allows two stories for single-family and townhome developments.

Also, the Use Permit review includes the requirement for the Planning Commission to review projects (located in the R-0, R-1 and R-2 zones) that exceed 45% Floor Area Ratio, which this project does.

Site Layout: The subject site is 60 feet in width and 202 feet in depth. The site is the typical lot dimensions for the R-2 zoned properties along this section of Poplar Avenue. A one-foot dedication for right-of-way is required of the project to allow for standard street improvements to Poplar Avenue. The three units would be accessed by a new driveway which runs along the north boundary of the project.

Setbacks: Assessing the setbacks for three units on an existing lot accessed by a private drive is difficult because the two interior lots do not front on a public street. Staff has determined that Lot 1 (facing Poplar Avenue) has a front setback requirement along Poplar Avenue, two side yards along the left and right side of the property and a rear yard opposite Poplar Avenue. Lots 2 and 3 would have side yard setbacks on all sides except at the rear furthest away from Poplar Avenue, which is considered a rear yard setback. The project meets all of these setback requirements.

Relation to neighboring properties: The general development pattern along this side of Poplar Avenue is that the driveway runs along the north side of the properties. That pattern is maintained with this proposal. The other development pattern is for multiple homes on the properties so each one is adjacent to each other running from the street to the rear of the property. This general pattern creates similar setbacks from the neighboring homes, so the south property line is typically adjacent to a driveway on the adjacent property.

This pattern does not continue to the properties north of the site, where existing single-family homes back up to the property. As a result, the driveway runs along the back of these adjacent properties, rather than along the side of existing homes. This orientation has created concerns for the neighbors to the north of the subject site because their homes are situated so their private spaces and viewing areas look towards the subject property.

The applicant has attempted to meet the concerns of the neighbors by moving the home on lot 3 further away from the north property line. This would increase the setback for this home from 4 feet for the first story and 7 feet for the second story to 8 feet and 11 feet, respectively. The result improves the scale of the home adjacent to the neighbors rear yard, but the 27-foot high

home located 11 feet from the property line is greater than if the two lots backed up to each other, as is most common in residential areas.

The second stories for the homes on lots 1 and 2 would be set back 18 feet from the north property line, which is close to the what the requirement would be if the lots backed up to each other, where a 20 foot setback for the second story is required. In addition, the first floor would also be setback 18 feet for these two lots, where a 10 foot setback could be allowed if the lots were back to back.

The greatest impact to the neighboring properties occurs with the home design on lot 3. The first and second stories of the home are located closer to the northern property line for this lot than the others. The bulk of the home will be felt much more to the properties behind lot 3 than the others. This bulk and scale can be reduced by shifting a greater portion of the second story away from the north property line. Staff has included this as a condition of approval.

The impact of the proposed units to the homes to the north can be mitigated through the use of a 7 to 8 foot fence along the property line along with the addition of new trees to screen the views. Additionally, the applicant has changed the windows facing the properties to the north to either high sills or frosted glass.

On-site relationship: The units not only need to be compatible with the existing neighborhood, but also with each other. The creation of usable open space and landscaping are the primary goals, along with creating adequate spacing for privacy. To review the usable open space design, there are adopted Small Lot Guidelines and defined zoning standards. The guidelines ask for a minimum of a 15-foot dimension for usable open space rather than the zoning standard of 12 feet. Total area required is the same at a minimum of 500 square feet. Lot 3 would meet the 15 foot dimension as stated in the Small Lot Guideline. Units 1 and 2 are proposed to be 14 feet. All units meet the usable open space requirement of at least 500 square feet.

The homes have a 3 foot landscaping strip between the house and the driveway, and a 3 foot landscaping strip between the driveway and property line on the north. The expanse of driveway can be broken up by using an open paver system (turf blocks) or Hollywood driveway strips that allow grass to grow up in the uncovered parking spaces to provide additional softening near the homes (Condition 9.A.2). Lots 2 and 3 have the tightest constraints to each other because of the lack of a front yard setback for each lot. This is mitigated somewhat by the location of the uncovered parking area between the homes.

Stormwater Management: This project has less than 10,000 square feet of impervious surface; therefore, it is not subject to Stormwater Management Best

Management Practices (BMP) requirements for either Group I or Group II projects. A recommended condition of approval (Condition 9.L) directs that roof drains be directed to landscape areas rather than directly to the storm drain and include BMP to the extent practicable for other impervious surfaces on site.

Easements and Undergrounding: The overhead utility lines run across the back of the adjacent properties and do not need to be placed underground. All service drops from these lines to the subject property should be placed underground.

Architecture: The project proposes three new two-story single-family homes ranging in size from 2,133 to 2,312 square feet. Each home includes a decorative craftsman column covered entry and a two-car garage. Elements of interest and articulation include bay windows, wood beams and corbels, inset second stories, pop outs and variations in roof peaks and planes. All homes facing the single-story homes to the north will have either high sill windows or frosted glass in order to protect the privacy of the neighbors. On units 1 and 2, second-story facades facing east do not have windows in order to respect the privacy of other homeowners. The recommended building materials include a 50-year dimensional composition roof, a stucco wall finish and foam trim.

The project has an overall FAR of approximately 54%, which exceeds the Small Lot Guideline of 50%. The individual FAR for each lot is: lot 1 46.5%, lot 2 62.9% and lot 3 58.8%. The impact of this higher FAR is diminished by virtue of meeting all setback, height and open space requirements. In addition, a similarly designed project on the same size lot was approved by the City Council in early 2005 (2004-0857) on a lot located 8 parcels to the south. Although the total and individual lot FAR is greater than the properties to the north, it is similar to other developments along Poplar; the bulk, height and setbacks meet all requirements and it is similar to the existing properties that face Poplar Avenue.

The following Guidelines were considered in the analysis of the project architecture:

"Name of Guidelines"	Comments
<i>2.2.1 Reinforce prevailing neighborhood home orientation and entry patterns</i>	Unit 1 has front door orientation to Poplar Avenue. All other units are oriented to the private drive, such as found elsewhere on Poplar.

"Name of Guidelines"	Comments
<i>2.2.2 Respect the scale, bulk and character of homes in the adjacent neighborhood</i>	The character of the neighborhood south of the site is two-story buildings and multi-unit complexes that appear bulky. The neighbors to the north consist of single-family homes. The proposal meets the scale, bulk and character of the majority of the neighborhood, but unit 3 can be redesigned to reduce the impact on the neighbor to the north of the property.
<i>2.2.3 Design homes to respect their immediate neighbors</i>	The window types and locations have been designed to respect the neighbor's privacy. Units 1 and 2 are setback 18' from the northern property line, which respects the immediate neighbors. Unit 3 meets the setback requirements but could be designed to reduce the impact on the immediate neighbor.
<i>2.2.6 Use high quality materials and craftsmanship</i>	Additional elements such as clerestory or shuttered windows and high quality texture roofing materials create high degree of interest.
<i>LUTE C9 Define building entries by use of human scale architectural elements such as arches, posts, awnings, etc. Orient main entries toward public streets</i>	The location of doorways, posts and entryways creates a pleasant scale on site, and the front unit is oriented to Poplar Avenue.

Landscaping: The applicant proposes a 3-foot landscape strip along the north edge of the driveway to soften the appearance and provide buffering to the adjacent homes. Front yard landscaping is proposed along Poplar Avenue, and all units include landscaping and shrubbery between the housing units, private driveway and parking areas.

The on-site Redwood tree located at the front of the property along Poplar Avenue is considered a healthy tree and is proposed to be retained on site. The large avocado tree located near the driveway is proposed to be removed. This tree has been found to be unhealthy and would be further impaired by the location of unit 1. It is proposed for removal. One new street tree is to be planted as a condition of approval. A tree protection plan incorporating long-term recommendations of the arborist report and standard construction period preservation measures is included as condition of approval.

The applicant has proposed adding new trees and landscaping along the north property line in order to add to the privacy screening for the neighbors.

Parking/Circulation: The project complies with the parking requirement of two covered parking spaces and two uncovered parking spaces per unit. Each lot provides required parking and no common area parking is proposed. The project includes a driveway easement to allow each resident to pass across the neighboring lots, and includes the provision of back-up space for lot 3 onto lot 2.

The following Guidelines were considered in analysis of the project parking and circulation:

"Name of Guidelines"	Comments
<i>3.2 Parking: Design garages and driveways to compatible with the neighborhood</i>	The applicant has provided for the necessary on-site parking, driveway easements and driveway dimensions. Street improvements will allow for on-street parking as well.

Compliance with Development Standards/Guidelines: The applicant meets the minimum area per dwelling unit and setback requirements. The project does not meet the required 76 foot lot width standard, which is why a Use Permit is required. The existing 60 foot width exists and cannot be increased without moving an adjacent property line, which would impact that property. The project complies with all other development standards.

The project exceeds the Small Lot Guidelines of 50% FAR with an overall proposed 54% FAR project. The project does not attain the guideline for a minimum 15 foot dimension for open space, but does meet the zoning requirement of 12 feet.

Expected Impact on the Surroundings: The project will affect the properties located north of the site. These properties have always enjoyed a property with a 12% FAR. The comparison between the proposal and adjacent properties is shown in the table below:

Address	Lot Size	Floor Area	FAR
1002 Tulip Dr.	6,601	1,929	29.20%
1006 Tulip Dr.	5,856	1,733	29.50%
1010 Tulip Dr.	5,927	1,929	32.50%
1014 Tulip Dr.	5,630	2,476	43.90%
1223-1225 Valerian Ct.	13,200	2,670	20.20%
Proposed Lot 1	4,967	2,312	46.50%
Proposed Lot 2	3,389	2,133	62.90%
Proposed Lot 3	3,707	2,183	58.80%

As the table shows, the home sizes are not out of character with the surrounding area, but the smaller lot sizes create a higher FAR. The amount of impact is subject to individual values. In order to provide the allowed three units on site, the applicant has attempted to design a project that reduces the impacts to the neighbors while providing an economically viable project. The inclusion of high sill windows, expanded setbacks and use of frosted glass help in reducing the impacts. It is possible for the impacts to be further reduced by relocating the second story on unit 3 further away from the north property line. The property on the south is similarly oriented on site, so the impacts to this property should be minimal.

Tentative Map

Description of Tentative Map: The project includes the subdivision of one parcel into three. There is no common lot as a part of the project, but there is a driveway easement to allow each resident to cross the property of their neighbors for ingress, egress and back-up space. Maintenance agreements will be required to ensure its maintenance by all parties in the development.

A one-foot dedication for Poplar Avenue is required as a condition of approval. A requirement for standard specification street improvements, including a monolithic sidewalk, is included as a condition of approval. The service drop from the adjacent overhead utility lines will be required to be placed underground.

Fiscal Impact

No fiscal impacts other than normal fees and taxes are expected. The project will require payment of a traffic impact fee currently estimated as \$3,610.06 and park dedication fee estimated as \$33,690.93.

Public Contact

The applicant and staff have met with the neighbors located north of the property. One of their concerns is the impact of the project on their privacy in their homes and backyards. The applicant has attempted to address their concerns by adding high sill windows and frosted glass to windows which face the north. The neighbors also feel the homes are too large for the site, should be reduced in bulk and scale and that attention to landscaping should be emphasized (Correspondence from neighbors in Attachment F).

Planning Commission Study Session: On July 10, 2006, the Planning Commission reviewed the project. The neighbors and applicant were present at the session. The general comments at the study sessions included:

- It seems that the home on lot 3 is too large for the placement on the site. Maybe reduce the footprint or move the second story portion further away from the north property line.
- Concern about the amount of open space on site. Make every effort to retain the available usable open space for each unit.
- Look at use of turf block for uncovered parking areas in order to break up paved area.
- Good street presence for unit 1.
- Second story of unit 2 seems too boxy.
- Attention to the placement and type of windows is important.
- Look at possibility of reducing the roof pitch in order to bring down the mass of the homes.
- The Commission also wanted to know what the density of other properties along Poplar Avenue is, and if the subject property is consistent with them. The properties along this portion of the street were mainly developed when the area was within the County's jurisdiction, and the available information about these properties is inconsistent. Staff has reviewed the area and estimates that the common density of these properties is approximately 40%-50%.

Staff reviewed the Planning Commission's comments with the applicant, and a revised plan was submitted. The new plan changed the window types and placement and moved unit 3 further from the north property line. The usable open space was not affected by the changes. Neither the unit 2 second story nor the roof pitches were changed, as suggested by the Commission. Lowering the pitch height can sometimes make a building appear more massive. Staff has included conditions of approval regarding adding turf block in the driveway area and reducing the second story design for unit 3.

Notice of Public Hearing	Staff Report	Agenda
<ul style="list-style-type: none">• Published in the <i>Sun</i> newspaper• Posted on the site• 13 notices mailed to the property owners and residents adjacent to the project site	<ul style="list-style-type: none">• Posted on the City of Sunnyvale's Website• Provided at the Reference Section of the City of Sunnyvale's Public Library	<ul style="list-style-type: none">• Posted on the City's official notice bulletin board• City of Sunnyvale's Website

Conclusion

Discussion: Although the project includes FAR's higher than those found on the properties to the north, the request is consistent with other new developments along the street. The subject R-2 site is located immediately adjacent to existing R-0 lots; therefore, the subject site does have transitional issues. As such, certain design elements should be included in the design to allow the project to meet the character of the entire area. The project meets all setback, height and lot size requirements, and is similar to an existing project recently approved by the Planning Commission and City Council located on the same street. By revising the window types and placement, moving the homes away from the northern properties and including a wall and landscaping along the north property line, the applicant has attempted to respond to the concerns of the neighbors. The second story of unit 3 can be redesigned to move further away from the northern property lines to respond to the privacy concerns of the neighbors.

Findings and General Plan Goals: Staff was able to make the required Findings based on the justifications for the Use Permit. Findings and General Plan Goals are located in Attachment A.

Conditions of Approval: Conditions of Approval are located in Attachment B.

Alternatives

1. Approve the Use Permit and Parcel Map with attached conditions.
2. Approve the Use Permit and Parcel Map with modified conditions.
3. Deny the Use Permit and Parcel Map.

Recommendation

Recommend Alternative 2.

Prepared by:

Andrew Miner
Project Planner

Reviewed by:

Trudi Ryan
Planning Officer

Attachments:

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Site and Architectural Plans
- D. Letter from the Applicant
- E. Letters from Other Interested Parties

Recommended Findings - Use Permit

Goals and Policies that relate to this project are:

Land Use and Transportation Element

C2.2 – *Encourage the development of ownership housing to maintain a majority of housing in the City for ownership choice*

N1.4.1 – *Require infill development to compliment the character of the residential neighborhood*

1. The proposed use attains the objectives and purposes of the General Plan of the City of Sunnyvale as the project provides for compatible infill development while attaining the zoning standards and guidelines designed to meet community standards for livability, character and quality. Additionally, it provides additional ownership housing opportunities and reinvestment in an existing neighborhood renewing a run-down site.
2. The proposed use is desirable, and will not be materially detrimental to the public welfare or injurious to the property, improvements or uses within the immediate vicinity and within the Zoning District because the proposed project meets the character of the neighborhood by providing single-family homes adjacent to other single-family homes at a density consistent with the other R-2 zoned properties adjacent to the site.

Recommended Findings - Tentative Map

In order to approve the Tentative Map, the proposed subdivision must be consistent with the general plan. Staff finds that the Tentative Map is in conformance with the General Plan. However, if any of the following findings can be made, the Tentative Map shall be denied. Staff was not able to make any of the following findings and recommends approval of the Tentative Map.

1. That the subdivision is not consistent with the General Plan.
2. That the design or improvement of the proposed subdivision is not consistent with the General Plan.
3. That the site is not physically suitable for the proposed type of development.
4. That the site is not physically suitable for the proposed density of development.
5. That the design of the subdivision or proposed improvements is likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
6. That the design of the subdivision or type of improvements is likely to cause serious public health problems.
7. That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of property within the proposed subdivision.
8. That the map fails to meet or perform one or more requirements or conditions imposed by the "Subdivision Map Act" or by the Municipal Code

Staff was not able to make any of the findings (B.1-8), and recommends approval of the Tentative Map.

Recommended Conditions of Approval - Use Permit

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following conditions of approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. GENERAL CONDITIONS

- A. Project shall be in conformance with the plans approved at the public hearing(s). Minor changes may be approved by the Director of Community Development, major changes may be approved at a public hearing.
- B. Any major site and architectural plan modifications shall be treated as an amendment of the original approval and shall be subject to approval at a public hearing except that minor changes of the approved plans may be approved by staff level by the Director of Community Development.
- C. The Conditions of Approval shall be reproduced on a page of the plans submitted for a Building permit for this project.
- D. The Use Permit for the use shall expire if the use is discontinued for a period of one year or more.
- E. The Use Permit shall be null and void two years from the date of approval by the final review authority at a public hearing if the approval is not exercised, unless a written request for an extension is received prior to expiration date.
- F. To address storm water runoff pollution prevention requirements, an Impervious Surface Calculation worksheet is required to be completed and submitted for the California Regional Water Quality Control Board prior to issuance of a Building Permit.

2. COMPLY WITH OR OBTAIN OTHER PERMITS

- A. Obtain necessary permits including a Development Permit from the Department of Public Works for all proposed off-site improvements.
- B. Obtain approval from the Crime Prevention Division of Public Safety Department for crime prevention measures appropriate to the proposed development prior to issuance of a Building Permit.

3. CC&R's (CONDITIONS, COVENANTS AND RESTRICTIONS)

- A. Any proposed deeds, covenants, restrictions and by-laws relating to the subdivision are subject to review and approval by the Director of Community Development and the City Attorney.
- B. Covenants, conditions and restrictions (CC&Rs) relating to the development are subject to approval by the City Attorney and Director of Community Development prior to approval of the Final Map. In addition to requirements as may be specified elsewhere, the CC&R's shall include the following provisions:
- C. The homeowners association shall obtain approval from the Director of Community Development prior to any modification of the CC&R's pertaining to or specifying the City.
- D. The developer shall maintain all utilities and landscaping for a period of three years following installation of such improvements or until the improvements are transferred to homeowners, following sale of at least two of the units, whichever comes first.
- E. The Conditions of Approval of this Use Permit.
- F. The CC&Rs shall contain the following language:
- G. Right to Remedy Failure to Maintain Common Area. In the event that there is a failure to maintain the landscaping and wall along the northern property line so that neighbors, owners, lessees, and their guests suffer, or will suffer, substantial diminution in the enjoyment, use, or property value of their properties, thereby impairing the health, safety and welfare of the residents on or adjacent to the project property, the City, by and through its duly authorized officers and employees, will have the right to enter upon the subject Property, and to commence and complete such work as is necessary to maintain said area. The City will enter and repair only if, after giving the owners written notice of the failure to maintain the area, they do not commence correction of such conditions in no more than thirty (30) days from the giving of the notice and proceed diligently to completion. All expenses incurred by the City shall be paid within thirty (30) days of written demand. Upon a failure to pay within said thirty (30) days, the City will have the right to impose a lien for the proportionate share of such costs against each Lot in the Project.
- H. It is understood that by the provisions hereof, the City is not required to take any affirmative action, and any action undertaken by the City will be that which, in its sole discretion, it deems reasonable to protect the public health, safety and general welfare, and to enforce it and the regulations and ordinances and other laws.

- I. It is understood that action or inaction by the City, under the provisions hereof, will not constitute a waiver or relinquishment of any of its rights to seek redress for the violation of any of the provisions of these restrictions or any of the rules, regulations and ordinances of the City, or of other laws by way of a suit in law or equity in a court of competent jurisdiction or by other action.
- J. It is further understood that the remedies available to the City by the provision of this section or by reason of any other provisions of law will be cumulative and not exclusive of the maintenance of any other remedy. In this connection, it is understood and agreed that the failure to maintain the area will be deemed to be a public nuisance and the City will have the right to abate said condition, assess the costs thereof, and cause the collection of said assessments to be made on the tax roll in the manner provided by appropriate provisions of the Sunnyvale Municipal Code or any other applicable law.
- K. No Waiver. No failure of the City of Sunnyvale to enforce any of the covenants or restrictions contained herein will in any event render them ineffective.
- L. Third-Party Beneficiary. The rights of the City of Sunnyvale pursuant to this Article will be the rights of an intended third party beneficiary of a contract, as provided in Section 1559 of the California Civil Code, except that there will be no right of Declarant, the Association, or any Owner(s) to rescind the contract involved so as to defeat such rights of the City of Sunnyvale.
- M. Hold Harmless. Declarant, Owners, and each successor in interest of Declarant and said Owners, hereby agree to save, defend and hold the City of Sunnyvale harmless from any and all liability for inverse condemnation which may result from, or be based upon, City's approval of the Development of the subject Property."

4. DESIGN/EXTERIOR COLORS AND MATERIALS

- A. Final exterior building materials and color scheme are subject to review and approval of the Planning Commission/Director of Community Development prior to issuance of a building permit.
- B. Roof material shall be 50-year dimensional composition shingle equivalent or better, or as approved by the Director of Community Development.
- C. Unit 3 shall be revised to reduce the second story bulk and scale in relation to the property north of the subject site. Final design of unit 3 is subject to approval by the Director of Community Development.

5. EASEMENTS AND DEDICATIONS

- A. Dedicate a driveway easement along the north side of the property prior to issuance of a Building Permit or Final Map. The easement shall reference the lot 3 back-up area onto lot 2.
- B. Dedicate a one-foot easement on Poplar Avenue.

6. EXTERIOR EQUIPMENT

- A. Location of individual air conditioning units is subject to approval by the Director of Community Development and shall be screened with architecture or landscaping features.

7. FEES

- A. Pay Traffic Impact fee estimated at \$3,610.06, prior to issuance of a Building Permit. (SMC 3.50)

8. FENCES

- A. Design and location of any proposed fencing and/or walls are subject to the review and approval by the Director of Community Development.
- B. Such fences may extend along side property lines, but do not extend beyond the front line of the unit on Poplar.
- C. Any fence between the unit facing Poplar and the public right-of-way shall not exceed three feet in height.
- D. For front yard fence, open decorative type fences, such as picket, post and rail are preferred.
- E. Chain link and barbed wire fences are not allowed.
- F. Install and maintain an 8 foot solid decorative masonry wall), measured from the highest adjoining grade, of a design approved by the Director of Community Development along the north and south property lines. Wherever the grade differential is one foot or higher, a concrete or masonry retaining wall shall be installed.
- G. Only fences, hedges and shrubs or other natural objects 3 feet or less in height may be located within a "vision triangle" (For definition, refer to Vision Triangle brochure or SMC 19.12.040(16), SMC 19.12.050 (12))

9. LANDSCAPING

- A. Landscape and irrigation plans are subject to approval by the Director of Community Development prior to issuance of a Building Permit. Landscaping and irrigation shall be installed prior to occupancy. The landscape plan shall include the following elements:

1. Tree and shrubs along the north property line to help screen the project from the neighboring properties.
2. Turf block or Hollywood paving in portions of the driveway, especially the uncovered parking spaces.
- B. Decorative paving as required by the Director of Community Development to distinguish entry driveways, building entries, pedestrian paths and common areas and to break-up the driveway.
- C. Provide separate meter for domestic and irrigation water systems.
- D. A tree protection plan shall be submitted for the redwood tree on lot 1. Where possible, trees shall be protected and saved. Provide an inventory and valuation of any trees proposed to be removed prior to issuance of building permits.
- E. All landscaping shall be installed in accordance with the approved landscape plan and shall thereafter be maintained in a neat, clean, and healthful condition.
- F. Prepare a landscape maintenance plan subject for review and approval by the Director of Community Development to ensure the long term viability of the trees planted along the north property line.
- G. Trees shall be allowed to grow to the full genetic height and habit (trees shall not be topped). Trees shall be maintained using standard arboriculture practices.
- H. Any “protected trees”, (as defined in SMC 19.94) approved for removal, shall be replaced with a specimen tree of at least 36-inch box size.
- I. At the expense of the subdivider, City staff shall install required street trees of a species determined by the Public Works Department. Obtain approval of a detailed landscape and irrigation plan from the Director of Community Development (SMC 19.38.070) prior to issuance of a Building Permit.
- J. All roof drains shall be directed to landscape areas rather than directly to storm drain.

10. TREE PRESERVATION

- A. Overlay Civil plans including utility lines to ensure that the tree root system is not damaged.

11. LIGHTING

- A. Lights shall have shields to prevent glare onto adjacent residential properties.

12. PARKING

- A. The uncovered parking spaces on lot 2 shall be available for cars of standard size, and no other obstruction shall be in place that would block the back-up area for cars from lot 3.
- B. Each unit shall have two covered and two uncovered parking spaces.
- C. Garage spaces shall be maintained at all times so as to allow parking of two automobiles.
- D. All covered spaces shall be provided with garage doors.

13. RECYCLING AND SOLID WASTE

- A. All exterior recycling and solid waste shall be confined to approved receptacles and enclosures.

14. UNDERGROUND UTILITIES

- A. All service drops shall be undergrounded.

15. PARCEL MAP CONDITIONS

- A. Full development fees shall be paid for each project parcel or lot shown on Parcel Map and the fees shall be calculated in accordance with City Resolutions current at the time of payment.
- B. Dedicate private sanitary sewer easements. Install these facilities per Building Division requirements.
- C. Pay Park In-lieu fees estimated at \$33,690.93, prior to approval of the Final Map or Parcel Map. (SMC 18.10)
- D. Dedicate private driveway as emergency vehicle ingress-egress easements.
- E. Curbs, gutters, sidewalks, streets, utilities, traffic control signs, electroliers (underground wiring) shall be designed, constructed and/or installed in accordance with City standards prior to occupancy. Plans shall be approved by then Department of Public Works.